

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

VERNA G. HENSLEY,

Plaintiff,

v.

Case No. 10-CV-11960
HON. GEORGE CARAM STEEH

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

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ORDER ACCEPTING REPORT AND RECOMMENDATION (#14), GRANTING
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (#10), AND DENYING
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT (#13)

On May 14, 2010, plaintiff filed a complaint for judicial review following an adverse decision of the Commissioner of Social Security. The matter was referred to Magistrate Judge Hluchaniuk. The parties filed cross-motions for summary judgment. On August 23, 2011, Magistrate Judge Hluchaniuk issued a Report and Recommendation on the cross-motions for summary judgment. Defendant filed an objection to the Report and Recommendation and plaintiff filed a response to the objection. In his Report, Magistrate Judge Hluchaniuk recommends defendant's motion for summary judgment be denied, plaintiff's motion for summary judgment be granted, the findings of the Commissioner be reversed, and the case be remanded for further proceedings. The Report notes that plaintiff's treating physician Dr. Kutas states plaintiff has significant limitations and should be limited to sedentary work. The Report also notes that consulting physician Dr. Kahn offers no opinion regarding plaintiff's functional limitations. Nothing in Dr. Khan's report

makes any findings regarding how much plaintiff can lift or how long she can sit or stand. As stated in the Report, his findings were that plaintiff had a diminished range of motion in her lumbar spine, normal motor strength, a negative straight leg raise, and a steady and stable gait. The Report also notes that the ALJ gave great weight, and cited extensively, to the opinion of Tammy Nguyen. The Report also discusses the fact that Ms. Nguyen is a non-physician “single decision maker” or SDM, but the ALJ believed she was a “DDS physician”.

In its objection, defendant argues the ALJ's error in believing the SDM was a physician should be deemed harmless error. Defendant argues this case is similar to Northern v. Astrue, No. 10-2-DLB, 2011 WL 720763, **4-5 (E.D. Ky. Feb. 22, 2011), another case in which an ALJ erroneously credited an RFC assessment as having been prepared by a physician, as opposed to the non-physician single decisionmaker who wrote it. Defendant argues the plaintiff here, like the plaintiff in Northern, failed to bring forth any evidence to show the ALJ's decision might have been different had the ALJ known that the assessment was not prepared by a physician. Defendant refers to Dr. Khan's assessment in support of the ALJ's conclusions. However, Dr. Khan did not render an opinion about plaintiff's limitations and therefore, as Magistrate Judge Hluchaniuk noted, there is no treating, consulting, reviewing, or examining opinion that contradicts Dr. Kutas's opinion that plaintiff has significant limitations. In addition, in Northern, the SDM assessment was affirmed and adopted by a second state agency consultant and physician. There is no such evidence in this case.

Therefore, the court accepts and adopts Magistrate Judge Hluchaniuk's report and recommendation, denies defendant's motion for summary judgment, grants plaintiff's

motion for summary judgment, reverses the findings of the Commissioner, and remands the case for further proceedings.

SO ORDERED.

Dated: September 22, 2011

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on September 22, 2011, by electronic and/or ordinary mail.

s/Marcia Beauchemin
Deputy Clerk